

10/28/98

**Declaration of Protective Covenants  
For  
Edgerton Business Park**

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ATTACHMENTS

Exhibit A - Legal Description of Edgerton Business Park

Exhibit B - Map of Edgerton Business Park

**DECLARATION OF PROTECTIVE COVENANTS  
FOR  
EDGERTON BUSINESS PARK**

THESE PROTECTIVE COVENANTS ("Protective Covenants") are made this 24 day of December, 1998 by the City of Edgerton, Wisconsin (the "Municipality") and MLG Limited Partnership ("Declarant");

**WITNESSETH**

WHEREAS, the Municipality is the owner of the property described on Exhibit A attached hereto, which property is located in the Municipality; and

WHEREAS, the Municipality and Declarant have agreed to work together to develop the property; and

WHEREAS, the Municipality and Declarant intend to create a high-quality office and industrial development on the property; and

WHEREAS, the Municipality and Declarant desire that the investment of each subsequent owner of any part of the property be protected and enhanced; and

WHEREAS, an orderly and attractive grouping of well-designed, constructed and landscaped buildings contributes to that objective; and

WHEREAS, subjecting such property to restrictions, covenants, and reservations is instrumental in achieving that objective.

NOW, THEREFORE, the Municipality hereby declares that the real property hereinafter described shall be held, sold, conveyed, transferred, used and improved only subject to the conditions, restrictions, covenants, reservations and easements hereinafter set forth, which shall bind and inure to the benefit of the Municipality, and its successors and assigns, and to all parties hereafter having any interest in the property:

**1. The Property**

The property described on Exhibit A attached hereto, shown on Exhibit B attached hereto and to be known as Edgerton Business Park (the "Park") is made subject to the provisions of these Protective Covenants. The Protective Covenants declared herein shall run with the land and shall affect the Park and each part thereof and any interest in the Park or any part thereof for all purposes and shall be binding upon and inure to the benefit of the landowners and all owners, lessees, and occupants of property in the Park, and their successors and assigns. Owners shall be fully responsible for compliance by their tenants with the provisions of these Protective Covenants.

## **2. Edgerton Business Park Association**

### *2.01 Formation and Function:*

The Declarant shall incorporate a Wisconsin non-profit corporation called Edgerton Business Park Association, Inc. (the "Association"). All owners ("Owner") of any separate tract or parcel of land ("Site") in the Park shall be members of the Association. The Association, through its Board of Directors, will be responsible for enforcing these Protective Covenants and maintaining any common areas and improvements in the Park and generally administering the Association.

### *2.02 Board of Directors*

The Association will be governed by a board of three (3) directors (the "Directors") who will initially be designated by the Declarant. The qualifications, election and duties of Directors shall be as set forth in the By-Laws of the Association.

### *2.03 Declarant Control*

Notwithstanding any other provisions contained in the By-Laws, Declarant, its successors and assigns, shall have the right at its option to appoint and remove the members of the Board of Directors and officers of the Association and to amend the By-Laws or rules and regulations of the Association until the earlier of: (a) thirty (30) years after the first sale of a Site in the Park by Declarant; (b) 30 days after the Declarant has conveyed all Sites in the Park and complete Application Plans (as defined in section 4.01) have been approved for all Sites; or (c) such earlier time as may be determined by Declarant. Each owner of a Site in the Park shall be deemed by acceptance of any deed to any Site to agree, approve and consent to the right of Declarant to so control the Association.

### *2.04 Edgerton Business Park Review Board:*

The Edgerton Business Park Review Board (the "Review Board") which shall exist for the term of these Protective Covenants and shall review and approve, conditionally approve or disapprove any structure or improvement of any kind, the construction or placement of which is proposed upon any Site within the Park, including, without limitation, any building, paving, landscaping (including screening, walls and fences) or other improvement or modifications thereto. If the Review Board disapproves any such structure or improvement, it shall specify the deficiency in the submitted Application Plans (as defined in Section 4 herein) and the changes necessary to the Application Plans in order to obtain approval from the Review Board.

Before construction or placement of any of the foregoing shall begin on any Site, all plans and specifications therefore shall be submitted to and approved in writing by the Review Board in accordance with Section 4 herein.

Membership of the Review Board shall consist of at least three (3) persons, at least one (1) of whom shall be an architect, a person with building construction experience or a land planner. The Declarant shall designate the Review Board Members, who shall serve in perpetuity unless and until such time as they may be replaced by the Declarant or resign. Upon the resignation of a member of the Review Board, the replacement member shall be appointed by the Declarant. Notwithstanding anything in this section 2.04 to the contrary, the Board of Directors of the Association shall be entitled to appoint the Review Board beginning the earlier of: (a) thirty (30) years after the first sale of a Site in the Park by Declarant; (b) 30 days after the Declarant has conveyed all Sites in the Park and complete Application Plans (as defined in section 4.01) have been approved for all Sites; or (c) such earlier time as may be determined by Declarant.

Any party aggrieved by a decision of the Review Board shall have the right to make a written request to the Board of Directors for review of said decision. The Board of Directors shall accept or decline such request in writing within 15 days after receipt of same. The decisions of the Review Board accepted for review may be overruled by the Board of Directors; the determination of the Board of Directors shall be final and binding in all such review matters.

#### *2.05 Membership Voting:*

For any matter to be voted upon by the Association membership, each Owner shall have the number of votes, including fractions thereof, equal to the number of Buildable Acres, as defined in Section 5.02 below, including fractions thereof, owned by said Owner in the Park. When a majority or percentage vote is required under these Protective Covenants, the requirement shall be calculated using the total number of votes available in the Park.

### **3. Use Restrictions**

#### *3.01 Permitted Uses:*

All building sites in the Park shall be used solely for office, laboratory, research, light manufacturing and processing, warehousing, wholesale distribution and service facilities and similar and ancillary uses approved by the Review Board and permitted or approved under the Municipality's Zoning Ordinances.

#### *3.02 Precluded Uses:*

No mini-warehousing, heavy manufacturing, junk or salvage, animal processing, recycling or incineration facility will be permitted except on such Sites, if any, as the Review Board, in its sole discretion, shall first approve. Uses prohibited under Municipality Zoning Ordinances are prohibited.

#### *3.03 Additional Precluded Uses:*

No nuisance or offensive or noxious odors, fumes, dust, smoke, noise, vibration, pollution, glare or other nuisance, or hazardous uses by reason of excessive danger of fire or explosion

shall be permitted in the Park. Determinations of nuisance shall be made by the Board of Directors upon the basis of written complaint or on its own initiative. Standards for nuisance or offensive and noxious use shall be those of the Municipality, Dane County, State of Wisconsin, and the United States of America. In addition, no lighting shall be permitted on any Site which, in the judgment of the Review Board, could serve as a nuisance or hazard to other sites or the general public, as described in Section 5.13.

#### **4. Application Plans and Approvals**

##### *4.01 Application Procedure*

Prior to constructing, expanding or altering of the shape, size or appearance of any building or other structure or improvement in the Park, or changing the use of any existing building or Site, the Owner shall submit to the Review Board for approval site and building plans and a written description of use and operations (the "Application Plans"). Each Owner shall obtain the services of an architect and an engineer in the development of the Application Plans and shall meet with a representative of the Review Board prior to preparation and submittal of the Application Plans. No building, structure, or other improvement shall be constructed, altered, or placed upon any Site until the appropriate Application Plans shall have been first approved in writing by the Review Board. Architectural plans must be prepared and signed by a registered Wisconsin architect.

Application Plans shall include the number of copies of each of the following as required by the Review Board:

- Scaled site plan, showing building location and setbacks (including the location of any planned building expansion), parking layout and setbacks, driveway and access locations, loading docks, site lighting and coverage, utility boxes and transformers and signage. Also, details of lighting and signage.
- Drawings showing all exterior building elevations, building heights and roof mounted equipment and utility meters (including size, location and proposed screening) and indicating building materials and colors. Also, a colored rendering or building elevations (showing the actual proposed colors) and samples of building materials and colors.
- Floor plan(s) indicating use.
- Landscaping plan, including sizes, quantities and types of plantings.
- Location, size and proposed screening for outside waste and recycling containers and the size and type of the proposed containers.
- Erosion control, grading and storm water drainage plans, including any existing trees to be removed and including all proposed water impoundments and finished grade levels.



- Written description of proposed use and operation, including number of employees, workshifts, products produced and/or services provided, manufacturing processes, materials handled (including anticipated truck traffic), any hazardous materials used in operations (including proposed safety precautions), any noise emitted and any air, water or solid waste material generated (including anticipated type and volume of waste and proposed methods for storing and disposing), and anticipated water useage.

All plans submitted shall include the preparer's name, the date of preparation and the dates of any revisions. Any revisions to Application Plans must be approved in writing by the Review Board.

#### *4.02 Review Board Variance:*

Upon written application to it, the Review Board shall have the authority to waive or vary these Protective Covenants when such waiver or variance will conform to the standards of the Park and where exact adherence to a standard will create an undue burden on the owner of the affected Site. Such waivers or variances shall be in writing, shall apply only to these Protective Covenants and shall not pertain to Municipality Zoning Ordinances or any other applicable ordinances.

#### *4.03 Guidelines:*

In order to assist Owners in complying with these Protective Covenants, the Association or the Review Board may publish guidelines ("Guidelines") from time to time. The Guidelines may pertain to any matters included within the scope of review described in Section 4.01 above. The Guidelines may be updated at any time, in the sole discretion of the Association or the Review Board, to reflect developments in applicable technology or to include changes deemed necessary or advisable, and shall be available to any Owner upon request. To the extent such Guidelines are published, approval of Application Plans by the Review Board shall be in accordance with the Guidelines as updated from time to time. However, the Guidelines shall not constitute amendments or modifications of these Protective Covenants, and in the event of any conflict or inconsistency, these Protective Covenants shall control.

### **5. Site Restrictions**

#### *5.01 Designation of Sites:*

A "Site" is a parcel of land in the Park (a) that has been conveyed to a purchaser other than Declarant or (b) upon which Declarant intends to construct a building.

#### *5.02 Land/Building Ratio:*

The initial construction on each Site shall equal or exceed the following minimums for the following types of facilities unless otherwise approved in writing by the Review Board:

<u>Type of Facility</u>	<u>Minimum Square Feet/Buildable Acre</u>
Office	4,000
Industrial	5,000

“Office” facility shall mean a facility in which more than thirty percent of the floor space is intended for use as office space. "Buildable Acre" shall mean all areas of the Park except those areas designated as "Greenspace" on Exhibit B. If and when the Declarant adds additional property to the Park pursuant to Section 17, the Declarant may designate any portion of such property as "Greenspace". No more than 80 percent of any Site in the Industrial Area shall be covered with buildings, surface pavement, or other covering materials which are impervious to surface water absorption unless otherwise approved in writing by the Review Board.

*5.03 Building Setbacks:*

Building setbacks shall comply with the Municipality’s Zoning Ordinances. No part of any building or other structure on a Site shall be located within the following distances from the following property lines of the Site, unless otherwise approved in writing by the Review Board:

<u>Property Line</u>	<u>Distance (Feet)</u>
Abutting any public street	50
Rear yard setback	30
Side yard setback	25

*5.04 Parking Setbacks:*

No parking on a Site used for an office or industrial facility shall be allowed within the following distances from the following property lines of the Site unless otherwise approved in writing by the Review Board:

<u>Property Line</u>	<u>Distance (Feet)</u>
Abutting State Highway	30
Abutting any other public street	20
Not abutting a public street	15

Curbs shall be considered as part of the parking area for purposes of complying with parking setback requirements.

*5.05 Building Height:*

No building shall be higher than as set forth in the Municipality's Zoning Ordinances.

*5.06 Storage:*

No fuel or chemical storage tank that is not in compliance with applicable Federal, State and Local laws and regulations shall be allowed in the Park. No outdoor storage of waste or recycling containers or any articles, goods, materials, finished or semi-finished products, incinerators, storage tanks, or any other items shall be permitted except as provided in Section 7.01 below.

*5.07 Fencing:*

No fences shall be constructed on any Site without the written approval of the Review Board. Fencing, where permitted, shall be solely for purposes of screening, security and landscape enhancement. Fencing shall be constructed only of permanent materials such as pressure-treated wood, masonry, or metal, and shall be approved by the Review Board in every instance. Plantings shall be provided along all fencing where such fencing is visible from any street.

*5.08 Temporary Structures:*

No temporary structures or trailers are permitted without prior written approval of the Review Board, except those belonging to construction companies during periods of construction.

*5.09 Ancillary Structures:*

No water tower, storage tank, processing equipment, solar collector, telecommunications equipment, cooling tower, satellite disks or other ancillary structure or outside equipment shall be constructed, erected or placed in the Park without the prior written approval of the Review Board.

*5.10 Freight Handling:*

All freight loading and unloading shall be handled on those sides of a building which do not face a street (including U.S.H. 51) except for situation where the size of the building and constraints of the site make a side location unfeasible. Exceptions such as the condition in the preceding sentence may be made at the sole discretion of the Review Board. If an exception is made, any loading dock facing a street must be at least 100 feet from the street and screened to the Review Board's satisfaction. Sites shall be designed such that all truck maneuvering shall take place on site.

*5.11 Signs/ Mailbox:*

All signs must be approved in writing by the Review Board. On-site directional signage will be allowed in any area needed to control traffic or parking provided such signage has received written approval from the Review Board. The Association shall have the right to enforce uniform sign and mailbox standards throughout the Park.

*5.12 Canopies:*

No truck canopies with visible wall hangers will be permitted without written approval from the Review Board. Design of canopies shall be in keeping with the design of the building.

*5.13 Lighting:*

All exterior lighting must be approved in writing by the Review Board. Lighting of a Site shall be of a design and height and shall be located so as to illuminate only the Site. No flashing, traveling, animated, or intermittent lighting shall be visible from the exterior of any building, whether such lighting is of temporary or long term duration. All lighting fixtures shall be maintained as originally approved. In addition, no lighting shall be permitted on any site which, in the judgment of the Review Board, would serve as a nuisance or hazard to other sites or to the general public. Lot lighting on street sides to be provided by pole mounted, down lighting fixtures. Lot lighting on the sides and rear may be building mounted, but fixtures must be down-light (cut-off) type fixtures.

*5.14 Erosion and Sediment Control:*

The drainage pattern on any Site shall not be changed significantly and no change in the drainage pattern onto lands adjacent to the Site shall be allowed. Specific erosion control, grading and storm water drainage plans shall be submitted as part of the Application Plans, and in addition to review and approval by the Review Board under Section 4 herein, must be approved by the Municipality. Each Owner shall be responsible for 1) prevention of erosion of its Site, 2) control of runoff of silt debris or sedimentation from its Site onto adjacent drain systems or properties, 3) removal of any such runoff, erosion, or sedimentation and 4) repair of any damage to such Site or adjacent Site by such runoff, erosion or sedimentation. In the event that an Owner fails to comply with any of the foregoing obligations within 30 days after receipt of notice from the Association or from the Municipality, the Association or Municipality may, in its sole discretion but without any obligation to do so, perform such obligations. If the Municipality performs the work, all costs incurred shall be assessed to the Owner and added to the Owner's property tax bill for the Site pursuant to Wisconsin Statutes Section 66.60(16), and the Owner hereby consents to such assessment and waives any notice or hearing. If the Association performs the work, and the cost of the work remains unpaid for 30 days after the Owner is billed therefor, such charges may be collected pursuant to procedures set forth in Section 15.

Storm drainage from the completely developed Site shall be in compliance with all Federal, State and local rules and regulations.

## **6. Parking and Landscaping**

### *6.01 Parking Generally:*

Each Site shall be provided with adequate paved off-street automobile parking as approved by the Review Board. No parking will be permitted on any street, driveway, or any place in the Park other than in approved parking spaces. Overnight parking of campers, mobile homes, boats, trailers and similar vehicles is prohibited unless prior written approval is obtained from the Association. Overnight parking of trucks and service vehicles shall be behind landscape screening so as to minimize visibility from the roadway unless prior written approval is secured from the Association.

### *6.02 Parking Ratio:*

Unless otherwise approved by the Review Board, areas for current and future parking needs shall be provided as follows:

- a. For any Site used for an office or industrial facility, a minimum ratio of one off-street passenger car parking space for each 1,100 square feet of gross warehouse building area, for each 575 square feet of gross manufacturing, production or service building area, and for each 250 square feet of gross office building area; and
- b. Notwithstanding the foregoing, each Site shall have parking capacity adequate to serve the reasonably expected parking needs for the Site; and
- c. No parking shall be permitted at any time upon any street or driveway in the Park or on any unpaved area of a Site; and
- d. No continuing or extended use shall be made of a Site or any building constructed thereon which requires, or is reasonably expected to require, parking in excess of the capacity of the parking facilities available on said Site.

### *6.03 Parking Location:*

No parking shall be allowed within the parking setbacks described in Section 5.04 above unless otherwise approved in writing by the Review Board.

### *6.04 Screening and Landscaping of Parking Areas:*

In the event parking is approved within the parking setbacks described in Section 5.04 above, such parking shall be screened by berm and/or increased landscaping from public view in a manner approved by the Review Board.

*6.05 Requirement to Pave Surfaces:*

All parking surfaces, driveways and loading areas shall be paved with a bituminous or concrete surface within ninety (90) days after occupancy or substantial completion of the building, whichever comes first, weather permitting. Curbs shall be provided within 25' of property line on street sides. .

*6.06 Driveways and Loading Areas:*

Driveway and loading areas shall be large enough to accommodate all vehicle maneuvering on the Site. Truck turn-arounds are prohibited on all public streets in the Park. Driveway points of access to public streets must be approved by the Review Board. Areas on the site designed for truck/trailer storage are only allowed with approval of the Review Board and such approval will be contingent on such storage area being adequately screened as determined by the Review Board in its sole desecration.

*6.07 Open Spaces:*

All open spaces shall be paved, landscaped, or planted as lawns. Landscaping, as approved by the Review Board, shall be installed within ninety (90) days after occupancy or substantial completion of the building, whichever comes first, weather and appropriate planting seasons permitting.

*6.08 Greenspace:*

No buildings or improvements of any kind shall be permitted in the Greenspace and no buildings or improvements may damage or impair the Greenspace.

*6.09 Trees:*

Trees may be cut on any Site only to the extent needed for construction and/or landscaping purposes and only following written approval from the Review Board.

*6.10 Right to Act on Owner's Behalf:*

If, in the opinion of the Association, any Owner fails to complete all required parking and landscaping as shown on approved Application Plans within the time periods specified in Sections 6.05 and 6.07 above, either the Association or the Municipality or both may give such Owner written notice and such Owner must, within thirty (30) days after such notice, complete such improvements in accordance with the notice. In the event that such Owner fails to complete such improvements within such 30-day period, the Association or the Municipality shall have the right and power, but not the obligation, to complete such improvements. If the Municipality completes such improvements, all costs incurred may be assessed to the Owner by the Municipality and added to the Owner's property tax bill for the Site pursuant to Wisconsin Statutes Section 66.60(16), and the Owner hereby consents to such assessment and waives any notice or hearing. If the Association completes such

improvements and the cost of the work remains unpaid for 30 days after the Owner is billed therefore, such charges may be collected pursuant to the procedure set forth in Section 15.

## **7. Screening:**

### *7.01 Storage:*

Waste and recycling containers shall be screened from view from the streets and adjacent sites by completely opaque screens unless otherwise approved in writing by the Review Board. No other articles, goods, materials, finished or semi-finished products, incinerators, storage tanks, or other items shall be kept outdoors or exposed to public view, or to view from adjacent sites.

A variance may be granted upon written application and prior written approval, as provided in Section 4. In the event that such approval is granted, such items shall be screened from view by extended building walls or completely opaque screens, and under no circumstances shall such storage occur within 50 feet of any street or lot line.

### *7.02 Roof Mounted Equipment:*

Roof mounted equipment shall be so located and/or screened and/or painted to minimize visibility from streets and adjacent Sites.

### *7.03 Loading Docks:*

Outside loading docks shall be screened from view from the streets and adjacent sites by extended building wall, berm and/or landscaping.

### *7.04 Utility Connections:*

Unless otherwise approved in writing by the Review Board, all utility connections, including all electrical and telephone connections and other installation of wires to buildings, shall be made underground from the nearest available source. No transformer, electric, gas or other meter of any type or other apparatus shall be located on any power pole nor hung on the outside of any building. All transformers and meters shall be placed on or below the surface of the property and where placed on the surface shall be screened and/or landscaped so as to minimize visibility from streets and adjacent sites. No electric utility boxes or transformers shall be located between a building and an abutting street.

## **8. Utility Easements**

The Association shall have the right to grant easements for utilities within the building setback areas of any Site for the benefit of Owners of other Sites within the Park. Such easements shall be approved by a resolution of the Board of Directors and signed by officers of the Association and shall be recorded with the Register of Deeds for Dane County, Wisconsin.

## **9. Construction Obligation and Repurchase Rights**

### *9.01 Construction Obligation:*

Each Owner shall promptly begin, diligently pursue and ultimately complete construction of buildings and other improvements on its Site pursuant to approved Application Plans.

In the event that construction of improvements has not been commenced within one (1) year after the date of closing of (a) the initial sale of a Site by Declarant or (b) any resale by a subsequent Owner, then, until such construction is commenced, the Declarant and the Municipality shall each have the option of repurchasing the Site from the Owner (the "Commencement Option"). Commencement of construction is defined to be construction of structural framing above ground level. To exercise the Commencement Option, the Declarant or the Municipality shall provide written notice of exercise of option (the "Notice") to Owner at Owner's last known address, including the date of repurchase closing. Notice shall be deemed to be received two days after deposit of the notice, postage prepaid, in the U.S. mail. The repurchase, as described in Section 9.02 below, shall occur within sixty (60) days after delivery of the Notice on the date specified in the Notice.

If after commencing construction work on any Site, construction ceases for a period of one hundred eight (180) consecutive days at any time before the completion of construction as provided in Owner's approved plans ("Cessation of Construction"), then, until such construction recommences, the Declarant and the Municipality shall each have the option to repurchase the Site from the Owner (the "Construction Option"). To exercise the Construction Option, Declarant or the Municipality shall provide written Notice of Exercise of Option as described above. Repurchase, as described in Section 9.02 below, shall occur within sixty (60) days after delivery of the Notice on the date specified in the Notice.

If Owner does not complete construction of the improvements as described in the approved plans and obtain an occupancy permit for the improvements within three (3) years after the date of closing of Owner's purchase of the Site from Declarant or a prior Owner, then, until such construction is completed and occupancy permit obtained, the Declarant and the Municipality shall each have an option to repurchase the Site from the Owner (the "Completion Option"). To exercise the Completion Option, Declarant or the Municipality shall provide written Notice as described above. Repurchase, as described in Section 9.02 below, shall occur within sixty (60) days after deliver of the Notice on the date specified in the Notice.

If either the Declarant or the Municipality exercises its option as set forth in this section 9.1, then the option of the other shall terminate with respect to the defaulting Owner, but shall apply again with respect to any subsequent Owner.



*9.02 Terms of Repurchase:*

If the Declarant or the Municipality exercises any of the options described in Section 9.01 above, at repurchase closing the Owner shall tender a warranty deed free and clear of all liens and encumbrances except municipal and zoning ordinances, recorded easements for public utilities and these Protective Covenants in exchange for a sum equal to Owner's purchase price for the Site less any unpaid real estate taxes, the proration for the then current year's real estate taxes, and the title insurance premium. Owner shall provide the party exercising the option with a title insurance policy for the full amount of Owner's purchase price.

In the event of repurchase as provided in this section, Owner shall also be liable to the Declarant, for all reasonable costs and expenses incurred in retaking and restoring the Site to marketable condition, and such costs and expenses shall be deducted from the amount of the purchase price paid to the Owner. Owner shall be deemed to consent to enforcement of the options described in Section 9.01 on the above terms by specific performance.

*9.03 Right of First Refusal to Repurchase Vacant Land:*

In the event that any Owner shall wish to convey any vacant portion of a Site or a vacant Site (the "Vacant Site") at any time within three (3) years after closing acquisition of the Vacant Site from Declarant, it shall first give the Declarant the right to purchase the Vacant Site at Owner's original purchase price and on the same terms and conditions as Owner's purchase. Within thirty (30) days after receipt of written notice that Owner wishes to convey a Vacant Site, Declarant shall notify Owner of its decision concerning repurchase. If Declarant decides to repurchase, closing shall occur within sixty (60) days after Declarant's receipt of Owner's written notice. If the Declarant is repurchasing a portion of a Site, the purchase price shall be prorated to reflect the total buildable square footage of the Vacant Site as compared to the total original buildable square footage of the Site purchased by Owner. "Buildable" shall mean that part of a Site not located within a Greenspace as described in Section 6.08 above.

**10. Disclaimer of Liability**

Neither the Association or the Review Board shall be liable to any person or entity submitting Application Plans for approval, or seeking any other approval under these Protective Covenants, or to any other person or entity affected by these Protective Covenants, by reason of engineering, architectural or technical errors or omissions in the Application Plans or materials submitted for approval. The Association and the Review Board shall not be deemed to provide architectural or engineering services in the review and approval of Application Plans, or in any other manner. Neither the Association or the Review Board shall be responsible for inspecting improvements during construction or for ensuring compliance with approved Application Plans. The Municipality shall not be liable to any person or entity as a result of (a) having approved of the form of this Declaration of Protective Covenants, or (b) the exercise or non-exercise of any right or discretion granted to the Municipality under these Protective Covenants, or (c) the exercise of any authority granted or vested in the Municipality by any applicable law, ordinance, rule or regulation pertaining to Edgerton Business Park.

## **11. Maintenance**

### *11.01 General Site Maintenance:*

Except as otherwise provided in Section 14 below, the Owner of any Site shall have the duty of, and responsibility for, keeping the buildings, paving, landscaping, lighting and other improvements, on the Site in a well-maintained, safe, clean, and attractive condition at all times. Although the Owner may by contract require tenants or occupants to perform these duties, the Owner shall be responsible to the Association for the duties arising under this Section. All grass, trees, and shrubbery must be kept in good appearance at all times. All grass must be cut whenever necessary and weeds must be controlled up to the curbs of public rights-of-way. Expansion areas and vacant lots may be left natural (i.e. only mowed every 1-2 years) provided the 25' from any public roadway () is mowed and maintained as described above. Each Owner shall be responsible for removal of any rubbish or trash of any character which may accumulate on a Site. Damaged or cracked areas of all parking lots, sidewalks, and other hard surfaces shall be promptly repaired or replaced. No sprinklers shall be allowed to spray onto the public street.

### *11.02 Site Maintenance During Construction:*

During construction it shall be the responsibility of each Owner to insure that construction sites are kept free of unsightly accumulations of rubbish and scrap materials.

### *11.03 Damage to Public Right-of-Ways and Common Areas:*

No Owner or its employees, contractors or agents shall dispose of snow or any other materials in the public right-of-ways located in the Park. No Owner or its employees, contractors or agents shall damage any public right-of ways in the Park or any Common Area (as described in Section 14 below).

### *11.04 Right to Act on Owner's Behalf:*

If, in the opinion of the Association or the Municipality, any Owner fails to comply with these maintenance and damage provisions, the Association or the Municipality or both may give such Owner written notice and such Owner must, within 15 days after such notice, undertake the care and maintenance required to restore said Owner's property to a well-maintained safe, clean, and attractive condition, as to repair any damage, in accordance with the notice. In the event that such Owner fails to remedy the condition after notice, the Association or Municipality shall have the right and power, but not the obligation, to perform such care and maintenance, or to repair any damage, as it deems necessary or desirable to remedy the violation. If the Municipality performs the work, all costs incurred may be assessed to the Owner by the Municipality and added to the Owner's property tax bill for the Site pursuant to Wisconsin Statutes Section 66.60(16), and the Owner hereby consents to such assessment and waives any notice or hearing. If the Association performs the work, and the cost of the work remains unpaid for 30 days after the Owner is billed therefor, such charges may be collected pursuant to the procedure set forth in Section 15.

## **12. Inspection**

The Association and the Municipality may from time to time at any reasonable hour or hours, enter or inspect any Site or improvements to ascertain compliance with these Protective Covenants. The Association shall use its best efforts not to compromise security measures and shall strive not to interfere with normal conduct of business when inspecting property under this provision.

## **13. Enforcement**

### *13.01 By Legal Action:*

These Protective Covenants may be enforced at law or in equity by the Association or the Municipality. However, if any Owner shall file with the Association a written petition for enforcement or commencement by the Association of proceedings to enforce these Protective Covenants and the Association shall fail to act accordingly within 30 days, or shall refuse such petition, then such petitioner may within a period of six months after filing such petition commence an action or proceeding against the violating Owner in law or in equity for enforcement or for damages arising from any violation of these Protective Covenants. Neither the Association nor the Municipality shall be liable to any person or entity for failure or refusal to enforce any provision of these Protective Covenants.

### *13.02 Association May Levy Fines:*

The Association may levy fines for continuing or flagrant violations of these Protective Covenants, including the parking provisions contained in Section 6. Fines shall be \$50 per violation or per day of continuing violation, until such time as a different fine schedule is adopted by the Board of Directors. Fines shall be assessed by written notice from the Board of Directors and paid to the Association. Fines for continuing violations shall not commence earlier than 48 hours prior to delivery of written notice to the Owner. Such fines and penalties, if they remain unpaid for 30 days, may become a lien against the Site pursuant to the procedures set forth in Section 15.

### *13.03 Right to Act on Owner's Behalf:*

In addition to the foregoing remedies, the Association may undertake the obligations of any Owner arising under Section 5.14, Section 6.10 or Section 11 of these Protective Covenants. The right to act on Owner's behalf shall arise if the Owner has not acted to correct a violation of 5.14, concerning sediment and erosion control, Section 6.10, concerning parking and landscaping, or Section 11, concerning maintenance, after receipt of notice of violation from the Association and an opportunity to cure the violation, both as provided in Section 5.14, Section 6.10 and Section 11, respectively.

## **14. Park Maintenance**

Following any initial maintenance agreed to be performed by the Municipality, the Association shall be responsible for maintenance of the following (together, the "Common Areas"):

- a. Entrance monuments for the Park, including all related landscaping and lighting, if any.
- b. Any parcel of land or improvement designated as Common Areas on Exhibit B.
- c. Any parcel of land or improvement located in Expansion Lands (as defined in Section 17 below) and designated by the Declarant as Common Areas at the time such Expansion Lands are added to the Park.
- d. Any property owned by the Association.
- e. If required by the City of Edgerton, landscape maintenance (i.e. grass cutting and litter removal) in the stormwater detention/retention areas serving the Park.

Except as otherwise provided in this Section 14, the Owners of Sites within the Park shall be responsible for maintenance of such Sites, including Greenspace within such Sites, as set forth in Section 11 of these Protective Covenants.

## **15. Association Assessments**

### *15.01 General Annual Assessment:*

All Sites and the Owners thereof shall be subject to a general annual assessment, determined and levied by the Board of Directors, for the purpose of paying the costs and expenses incurred by the Association in performing its purposes and functions, including but not limited to the enforcement of these Protective Covenants. The Board of Directors by November 1 of each year shall prepare an annual budget and shall determine a general annual assessment based thereon which shall be sufficient to meet the estimated costs and expenses of the Association for the ensuing year.

The annual budget shall be considered and approved at the annual meeting by the members of the Association. If within fifteen (15) days after the annual membership meeting a petition is presented to the Board of Directors protesting such assessments or the budget upon which they are based, and the petition is signed by members having more than fifty percent (50%) of the total number of votes available in the Park, then the Directors shall notify all members of a meeting called for the sole purpose of reviewing such assessments or budget. At such meeting, the vote of more than fifty percent (50%) of the total number of votes available in the Park may revise the budget and assessments, and such revised budget and corresponding assessments shall replace for all purposes the ones previously established; provided, however, that the annual budget and assessments may not be revised downward to a point lower than the average total budget for the preceding two years and provided further, that if a budget and assessments have not been established and made for two preceding years, then the budget and assessments may not be revised downward until two years of experience exist.

The general annual assessment shall be allocated and prorated among the members of the Association in proportion to the Buildable Acres owned by each Owner, and shall be paid at the time and in the manner determined by the Board of Directors, which time shall not be

sooner than thirty (30) days after the date of the annual membership meeting at which the annual budget shall have been submitted to the membership.

*15.02 Special Assessments:*

Each Site and the Owners thereof shall be subject to special assessment by the Board of Directors to cover all or any part of any extraordinary expenses incurred by the Association but not included in the annual budget. Such special assessments shall be allocated among the Owners in proportion to the Buildable Acres owned by each Owner. Special assessments shall be due and payable sixty (60) days after the affirmative vote declaring such special assessments by the Board of Directors of the Association. Special assessments levied in any one calendar year shall not exceed 20% of the annual budget for such year without approval of a majority of the total number of votes available in the Park.

*15.03 Collection and Enforcement:*

The right to collect or enforce the collection of any assessments, special assessments, charges or fines assessed by the Association under these Protective Covenants is hereby delegated exclusively to the Association. The Owners shall be obligated to pay such charges, assessments, special assessments or fines, when due, and such charges, assessments, special assessments or fines shall also be and constitute a lien until paid, against the Site to which charged. All charges, assessments, special assessments and fines levied by the Association which are unpaid when due shall bear interest from such due date at a rate equal to three percent (3%) per annum above the prime interest rate reported in the Wall Street Journal, or if the Wall Street Journal is unavailable, the prime interest rate in a similar publication selected by the Association, until paid in full provided, however, that the interest rate shall be not less than twelve percent (12%) per annum ("Interest"). Such Interest, together with the underlying assessment or fine, shall from such time as the assessment or fine is unpaid when due become and remain a part of the lien upon such Site until paid.

*15.04 Lien Against Site:*

In the event that any assessment, charge or fine levied against any Site hereunder remains unpaid for a period of sixty (60) days from the due date, the Board of Directors may, in its discretion, file an action at law or a claim pursuant to Section 779.70(4) of the Wisconsin Statutes for a lien against such Site at any time within six (6) months from the date of the levy, such claim to be filed in the office of the Clerk of the Circuit Court of Dane County. The resulting lien may be enforced by foreclosure proceedings brought by the Association. Any such foreclosure action shall be brought in the same manner as an action to foreclose a real estate mortgage, and there shall be added to the amount due the costs of suit and Interest, together with a reasonable attorney's fee.

Any lien upon a Site securing unpaid assessments, special assessments, charges or fines arising hereunder shall be subject to and subordinate to the lien of any first mortgage upon such Site whether the mortgage is executed or recorded prior to or after the creation of such lien. Nothing herein contained shall prevent or impede the collection of lawful charges, assessments and taxes by the Municipality.

## **16. Amendment and Term of Protective Covenants**

### *16.01 Amendment of Protective Covenants:*

These Protective Covenants may be terminated, extended or amended, with a written affirmative vote of 66-2/3% of the total number of votes available in the Park; provided, however, that these Protective Covenants may not be terminated, extended or amended without the written consent of the Municipality; provided, further, that as long as the Declarant owns any land in the Park, these Protective Covenants may not be terminated, amended or extended without the written consent of the Declarant.

### *16.02 Term of Protective Covenants:*

These Protective Covenants shall remain in force for 30 years from the date hereof. Thereafter, these Protective Covenants shall renew automatically for successive periods of 5 years each unless terminated by a majority vote of the total number of votes available in the Park, provided that the Municipality consents to termination.

## **17. Expansion of Edgerton Business Park**

Notwithstanding anything in section 16.02 of these Protective Covenants to the contrary, the Declarant may from time to time during the term of these Protective Covenants, add property to the Park (the "Expansion Lands"), and by recorded supplement to these Protective Covenants, declare such Expansion Lands, and the owners of such property to be subject to the terms of these Protective Covenants. The Declarant shall designate those parts, if any, of such Expansion Lands that will be "Greenspace" or "Common Areas".

## **18. Termination and Assignment of Declarant's Rights**

The rights of Declarant under these Protective Covenants as set forth in Section 2.03, 2.04 and 16.01 and 17 shall terminate thirty (30) years after the date of these Protective Covenants. Declarant may assign all or part of its rights under these Protective Covenants.

## **19. Municipal Rights of Approval**

All pertinent and applicable laws, ordinances, rules and regulations of governmental agencies shall be applicable to the development of the Park, including, but not limited to ordinances of the Municipality, such as the zoning code, building code, erosion control, fire protection and sign ordinances. Nothing in these covenants shall be construed as waiving or releasing any person from compliance with such laws, ordinances, rules and regulations.

## **20. Waiver of Rights**

The failure of the Association, the Review Board or the Municipality, or any Owner to enforce any provision of these Protective Covenants shall not be deemed to be a waiver of the right to do so thereafter nor of the right to enforce any other restriction. Nor shall the failure of the

Declarant to exercise any option to purchase de deemed a waiver of any other right under this Declaration or any applicable law, ordinance, rule or regulation.

### **21. Right to Re-Subdivide**

At the time of purchase of a Site from Declarant, such Site shall be considered as a single building site for all purposes hereunder. Re-subdividing of such Site by an individual Owner shall not be permitted without prior approval by the Association and the Municipality.

### **22. Effect of Invalidation of Any Provision**

In the event that any provision of these Protective Covenants shall be held to be invalid by any court, the invalidity of such provision shall not affect the remaining provisions of these Protective Covenants, which shall continue in full force and effect to the extent enforceable.

### **23. Copyright Exceptions**

Notwithstanding any copyright notice included in this document, the City of Edgerton shall have the right to copy and distribute this document for any public uses required or permitted by the Wisconsin public records law. Wisconsin Statutes sections 19.21-19.39.





STATE OF WISCONSIN    )  
  ) SS.  
COUNTY OF Waukesha

Personally came before me this 7<sup>th</sup> day of December, 1998, the above-named Andrew C. Teske and Timothy J. Wallen, to me known to be the Vice President and Treasurer respectively, of MLG DEVELOPMENT, INC., and who executed the foregoing instrument and acknowledged the same as the act and deed of said corporation as general partner of MLG Limited Partnership.

Nancy K. Sherton  
Notary Public, State of Wisconsin  
My Commission expires: 9/5/99

This document was drafted  
by and after recording  
should be returned to:

Andrew C. Teske  
MLG - Mooney LeSage Group  
13400 Bishop's Lane, Suite 100  
Brookfield, WI 53005

k:\projects\edgerton\procov.nka

EXHIBIT A

Legal Description  
of  
Edgerton Business Park

(Attached)

000460

CERTIFIED SURVEY MAP NUMBER 9013

BEING A PART OF THE SOUTHEAST ONE QUARTER OF THE NORTHEAST ONE QUARTER OF SECTION 34 AND PART OF THE SOUTHWEST ONE QUARTER OF THE NORTHWEST ONE QUARTER OF SECTION 35 TOWN 5 NORTH, RANGE 12 EAST, CITY OF EDGERTON, DANE COUNTY, WISCONSIN.

SURVEYOR'S CERTIFICATE

I, Gregory A. Wood, Registered Land Surveyor hereby certify that in full compliance with Chapter 236.34 of the Wisconsin Statutes, the subdivision regulations of Dane County and the City of Edgerton and under the direction of the City of Edgerton I have surveyed, divided, mapped and monumented part of the SE1/4 of the NE1/4 of Section 34 and part of the SW1/4 of the NW1/4 of Section 35, Town 5 North, Range 12 East, City of Edgerton, Dane County Wisconsin and that this map is a correct representation of all of the exterior boundaries of the land surveyed and the division of this land which is described as follows:

Beginning at the East 1/4 corner of Section thence S89°05'38"W 1236.77 feet; thence N00°51'26"W 33.00 feet; thence N26°43'44"W 109.96 feet; thence N00°51'26"W 827.21 feet; thence N89°06'32"E 314.27 feet; thence N00°54'57"W 299.09 feet; thence N89°04'43"E 968.49 feet; thence S00°57'26"E 762.88 feet; thence N89°02'34"E 150.00 feet; thence S00°57'26"E 556.78 feet; thence S89°12'20"W 150.00 feet to the point of beginning. Parcel contains 38.5334 acres more or less.

Dated this 25<sup>th</sup> day of July 1998.

Gregory A. Wood  
Gregory A. Wood, Registered Land Surveyor S-2071

EXHIBIT B

Map of The Edgerton Business Park

(Attached)



Block No. 26273

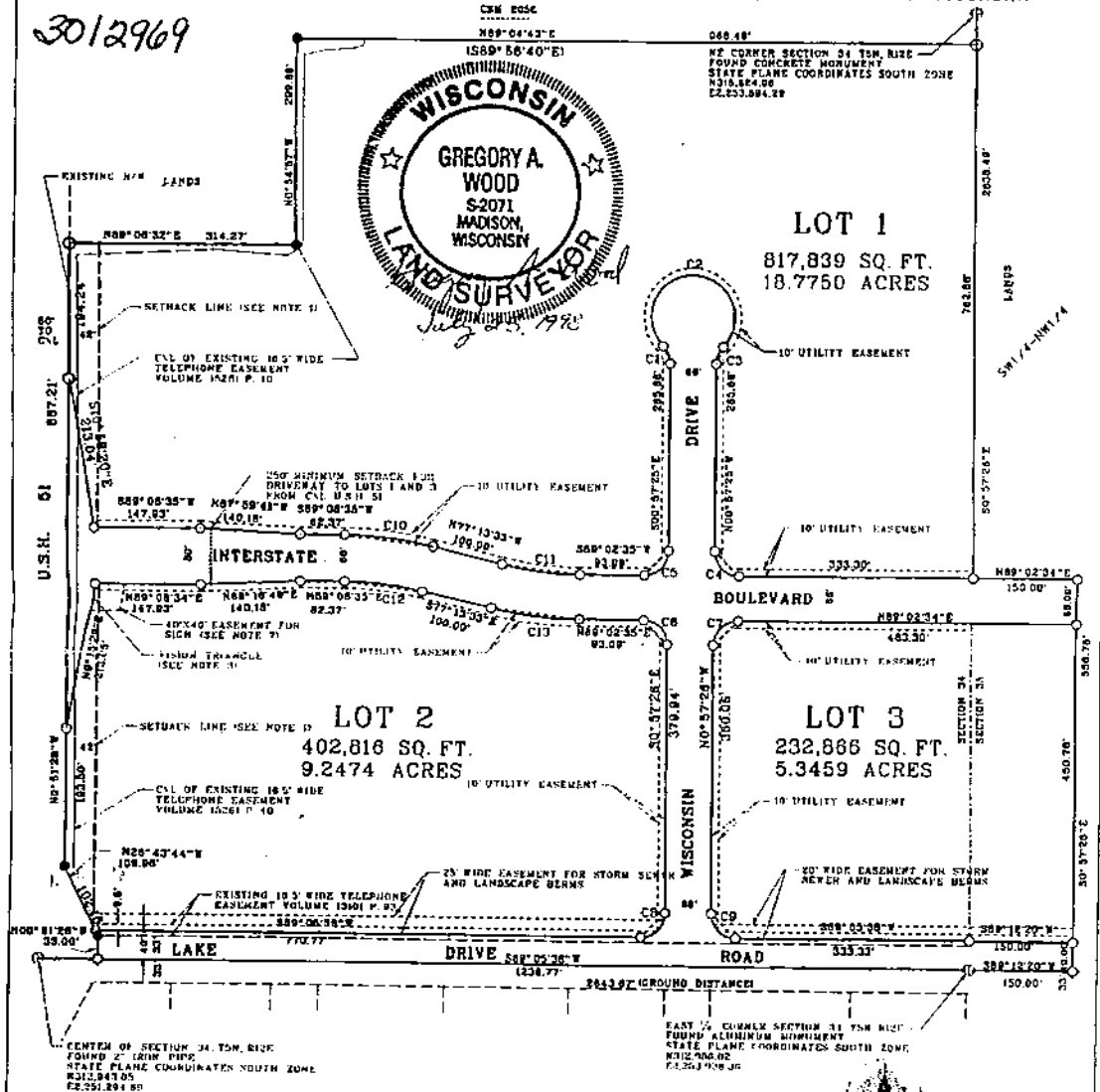
000459

# CERTIFIED SURVEY MAP NUMBER 9013

BEING A PART OF THE SOUTHEAST ONE QUARTER OF THE NORTHEAST ONE QUARTER OF SECTION 34 AND PART OF THE SOUTHWEST ONE QUARTER OF THE NORTHWEST ONE QUARTER OF SECTION 35 TOWN 5 NORTH, RANGE 12 EAST, CITY OF EDGERTON, DANE COUNTY, WISCONSIN.

3012969

NOTE:  
THERE IS NO  
"GREENSPACE" AS  
DEFINED IN SECTION  
5.02.



### NOTES

- 1 THERE SHALL BE NO IMPROVEMENTS PLACED BETWEEN THE HIGHWAY AND THE SETBACK LINE, EXCEPTING NOTE 2.
- 2 THERE WILL BE NO DIRECT ACCESS FROM ANY OF THE PARCELS TO U.S.H. SIDE LAKE DRIVE ROAD.
- 3 THE VISION TRIANGLE SHALL BE KEPT CLEAR OF ALL OBSTRUCTIONS INCLUDING OBSTRUCTIVE VEGETATION. NO PERMANENT STRUCTURES SHALL BE PLACED WITHIN THE LIMITS OF THE VISION TRIANGLE.
- 4 THE EASEMENT FOR LANDSCAPE BEAMS IS RESERVED FOR THE PLANTING OF TREES AND SHRUBS. THE BUILDING OF STRUCTURES HEREON PROHIBITED.
- 5 THE SOUTH 40 FEET OF THIS CERTIFIED SURVEY MAP ALONG WITH INTERSTATE BOULEVARD, WISCONSIN DRIVE AND THE VISION TRIANGLE ARE DEDICATED TO THE PUBLIC FOR ROAD RIGHT OF WAY PURPOSES.
- 6 SUBJECT TO EASEMENTS OF RECORD.
- 7 FORTY FOOT SIGN EASEMENT RESERVED FOR THE CITY OF EDGERTON FOR THE PLACEMENT OF AN INDUSTRIAL PARK SIGN.

BEARINGS REFERENCED TO THE EAST LINE OF THE NE1/4 OF SECTION 34, STATE PLANE COORDINATE SYSTEM SOUTH ZONE PER COUNTY RECORDS

### LEGEND

- 1/2" x 24" SOLID, ROUND IRON STAKE SET 1.50 LBS./LIN.FT.
- 1" IRON PIPE FOUND
- 1/2" IRON ROD FOUND
- PK NAIL SET
- ( ) RECORDED AS DATA

No.	ULLTA	AP.	COORDS (ELEV)	FOUND	FOUND ELEV.	FOUND BGC
C1	40° 12' 51"	24.65	27.00	27.00	27.00	N45° 14' 58" W
C2	28° 55' 03"	281.26	29.00	29.00	29.00	N45° 14' 58" W
C3	84° 17' 51"	27.06	26.00	26.00	26.00	N45° 14' 58" W
C4	30° 20' 00"	24.98	16.00	16.00	16.00	N45° 14' 58" W
C5	100° 00' 00"	54.38	14.00	14.00	14.00	N45° 14' 58" W
C6	100° 00' 00"	24.98	14.00	14.00	14.00	N45° 14' 58" W
C7	100° 00' 00"	24.98	14.00	14.00	14.00	N45° 14' 58" W
C8	40° 02' 04"	25.01	14.00	14.00	14.00	N45° 14' 58" W
C9	89° 55' 00"	22.95	14.00	14.00	14.00	N45° 14' 58" W
C10	13° 27' 28"	126.81	531.00	531.00	531.00	N84° 05' 29" W
C11	84° 57' 28"	111.10	467.00	467.00	467.00	N84° 05' 29" W
C12	84° 57' 28"	111.10	467.00	467.00	467.00	N84° 05' 29" W
C13	13° 43' 52"	121.74	531.00	531.00	531.00	N84° 05' 29" W



403 SCIENCE DR.  
MADISON, WI 53711  
(608) 238-4781

**FIRST AMENDMENT TO DECLARATION OF PROTECTIVE COVENANTS  
FOR  
EDGERTON BUSINESS PARK**

This FIRST AMENDMENT TO DECLARATION OF PROTECTIVE COVENANTS FOR EDGERTON BUSINESS PARK (this "Amendment") is entered into on this 3<sup>rd</sup> day of August, 2001 by the City of Edgerton, Wisconsin (the "Municipality"); and MLG Limited Partnership ("Declarant"). The following recitals form the basis of this Agreement and are made a material part hereof:

A. Declarant and the Municipality entered into and recorded the Declaration of Protective Covenants for Edgerton Business Park dated October 28, 1998 and recorded on December 11, 1998 as Document No. 3056997 with the Register of Deeds for Dane County, Wisconsin (the "Protective Covenants").

B. The Park, as originally defined and established by the Declaration, consists of the real property platted on Certified Survey Map 9013 recorded as Document No. 3012969 of Certified Survey Maps of Dane County, Wisconsin.

C. Declarant and the Municipality have re-platted a portion of the Park on Certified Survey Map Number 10069, recorded in Volume 59, Pages 118, 119 and 120 of Certified Survey Maps of Dane County, Wisconsin, as Document Number 3331170, in order to create and establish a second phase of the Park.

D. Declarant and the Municipality desire to amend the Declaration as provided below.

E. Except as otherwise provided in this Amendment, the capitalized terms used herein shall have the definitions for such capitalized terms set forth in the Declaration.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed by Declarant and the Municipality as follows:

1. The Property. Section 1 of these Protective Covenants is hereby amended by adding the following as an additional provision at the end of such Section 1:

To the extent it is not already included in the Park, the property shown and described on Certified Survey Map Number 10069, recorded in Volume 59, Pages 118, 119 and 120 of

Certified Survey Maps of Dane County, Wisconsin, as Document Number 3331170 is hereby made subject to the provisions of these Protective Covenants.

2. Board of Directors. Section 2.02 of these Protective Covenants is hereby deleted in its entirety and replaced by the following:

The Association will be governed by a board of three (3) directors (the "Directors"). Declarant, the Municipality and the Owner (the "Lot 2 Owner") of Lot 2, Certified Survey Map Number 10069, recorded in Volume 59, Pages 118, 119 and 120 of Certified Survey Maps of Dane County, Wisconsin, as Document Number 3331170, shall each have the right to designate one (1) of the initial Directors (collectively, the "Initial Directors") who shall serve until such time as they resign, are replaced by the party that appointed them initially or control of the Association passes to the Owners. Upon the resignation of an Initial Director, the replacement director shall be appointed by the party that appointed said director initially. The qualifications, election and duties of Directors shall be as set forth in the By-Laws of the Association.

3. Declarant Control. Section 2.03 of these Protective Covenants is hereby deleted in its entirety and replaced by the following:

2.03 *Board of Directors Control*

Notwithstanding any other provisions contained in the By-Laws, the Initial Directors, upon an affirmative vote of two-thirds (2/3) of the Initial Directors, shall have the right at their option to appoint and remove officers of the Association and to amend the By-Laws of the Association or rules and regulations of the Association until the earlier of: (a) thirty (30) days after Declarant has conveyed ninety percent (90%) of the Buildable Acres in the Park to the Owners; or (b) such earlier time as may be determined by the Initial Directors. Each owner of a Site in the Park shall be deemed by acceptance of any deed to any Site to agree, approve and consent to the right of the Initial Directors to so control the Association.

4. Edgerton Business Park Review Board. The third paragraph of Section 2.04 of these Protective Covenants is hereby deleted in its entirety and replaced by the following:

Membership of the Review Board shall consist of at least three (3) persons, at least one (1) of whom shall be an architect, a person with building construction experience or a land planner. Declarant shall have the right to designate two (2) of the members of the Review Board and the Municipality shall have the right to designate one (1) member of the Review Board (collectively, the "Initial Review Board Members") who shall serve until such time as they resign or are replaced by the party that appointed them initially. Upon the resignation of an Initial Review Board Member, the replacement member shall be appointed by the party that appointed said member initially. Notwithstanding any other provision in this Section 2.04 to the contrary, the Declarant and the Municipality shall be entitled to appoint the Review Board Members until the earlier of: (a) thirty (30) days after Declarant has conveyed ninety percent (90%) of the Buildable Acres in the Park to the Owners; or (b) such earlier time as may be determined by the Initial Directors by unanimous written consent. Notwithstanding anything in these Protective Covenants to the contrary, this Section 2.04 may not be amended without the unanimous written consent of the Initial Directors.

5. Buildable Acres. The definition of "Buildable Acre" set forth in Section 5.02 of these Protective Covenants is hereby deleted in its entirety and replaced by the following:

"Buildable Acres" shall mean all areas of the Park except those areas designated as "Greenspace", "Common Areas", public streets, or public stormwater drainage and detention areas. On the date hereof, there are 85.23 Buildable Acres in the Park. Upon completion of Phase III of the Park and the public dedication of the streets and ponds contained therein, the Park will contain 77.73 Buildable Acres.

6. Utility Easements. Section 8 of these Protective Covenants is hereby amended by adding the following as an additional provision at the end of such Section 8:

Notwithstanding any other provision of this Section 8 to the contrary, the Association shall not have the right to grant any easements within the building set back areas of Lot 2, Certified Survey Map Number 10069, recorded in Volume 59, Pages 118, 119 and 120 of Certified Survey Maps of Dane County, Wisconsin, as Document Number 3331170 except for those easements to be located within the easement areas designated on said Certified Survey Map.

7. Right of First Refusal to Repurchase Vacant Land.

a. Section 9.01 of these Protective Covenants is hereby amended by adding the following as an additional provision at the end of such Section 9.01:

Notwithstanding any other provision of this Section 9.01 to the contrary, if on one or more occasions, any Owner shall be prevented or delayed from punctually performing any obligation or satisfying any condition under this Section 9.01 by any strike, lockout, labor dispute, inability to obtain labor, materials or reasonable substitutes therefor, acts of God, unusual governmental restriction, regulation or control, enemy or hostile government action, civil commotion, insurrection, sabotage, fire or other casualty, or any other condition beyond the reasonable control of such Party or caused by the Declarant or the Municipality, then (i) the time to perform such obligation or to satisfy such condition shall be extended, on one or more occasions, on a day-by-day basis for the period of delay caused by such event (each, an "Extension Period"); and (ii) Declarant's and the Municipality's right to exercise the Commencement Option, the Construction Option and the Completion Option shall be waived during any such Extension Period.

b. Section 9.03 of these Protective Covenants is hereby amended by adding the following as an additional provision at the end of such Section 9.03:

Notwithstanding any other provision of this Section 9.03 to the contrary, Declarant and the Municipality hereby waive all of the conditions, rights and obligations appearing in this Section 9.03 as they pertain to Lot 2, Certified Survey Map Number 10069, recorded in Volume 59, Pages 118, 119 and 120 of Certified Survey Maps of Dane County, Wisconsin, as Document Number 3331170.

8. Park Maintenance. Section 14, Paragraph (e) of these Protective Covenants is deleted in its entirety.



9. Amendment of Protective Covenants. Section 16.01 of these Protective Covenants is hereby deleted in its entirety and replaced by the following:

These Protective Covenants may be terminated, extended or amended, with a written affirmative vote of 66-2/3% of the total number of votes available in the Park; provided, however, that these Protective Covenants may not be terminated, extended or amended without the written consent of the Municipality for so long as the Municipality; provided, further, that these Protective Covenants may not be terminated, amended or extended without the written consent of the Declarant until the first to occur of (i) December 31, 2006; or (ii) the date on which the Declarant transfers title to twelve (12) additional acres in the Park.

10. Expansion of Edgerton Business Park. Section 17 of these Protective Covenants is hereby amended by adding the following as an additional provision at the end of such Section 17:

Notwithstanding any other provision of this Section 17 to the contrary, the Declarant shall not add Expansion Lands to the Park without the prior written consent of the Municipality.

11. Termination and Assignment of Declarant's Rights. The last sentence of Section 18 is deleted in its entirety and the following is substituted therefore:

Notwithstanding any other provision of these Protective Covenants to the contrary, the Declarant shall not assign all or part of its rights or delegate its obligations under these Protective Covenants without the prior written consent of the Municipality.

[Signatures appear on following pages.]

SIGNATURE PAGE FOR FIRST AMENDMENT TO DECLARATION OF PROTECTIVE COVENANTS FOR EDGERTON BUSINESS PARK

IN WITNESS WHEREOF, Declarant and the Municipality have signed this the undersigned have signed this Amendment as of the date set forth above.

CITY OF EDGERTON, WISCONSIN

By: [Signature]  
Printed Name: MATTHEW MCINTYRE  
Title: MAYOR

Attest: [Signature]  
Printed Name: Ramona Flanigan  
Title: City Administrator

STATE OF WISCONSIN )  
 ) SS.  
COUNTY OF DANE )

Personally came before me this 2nd day of August, 2001, the above-named Matthew McIntyre and Ramona Flanigan, the Mayor and Administrator respectively, of the City of Edgerton, Wisconsin and who executed the foregoing instrument and acknowledged the same as the act and deed of said entity.

[Signature]  
Notary Public, State of Wisconsin  
My Commission Expires: is forever

SIGNATURE PAGE FOR FIRST AMENDMENT TO DECLARATION OF PROTECTIVE COVENANTS FOR EDGERTON BUSINESS PARK

MLG LIMITED PARTNERSHIP

By: MLG Development, Inc., its general partner

By: Andrew C. Teske  
Printed Name: ANDREW C TESKE  
Title: VICE PRESIDENT

Attest: X  
Printed Name: X  
Title: X

STATE OF WISCONSIN )  
 ) SS.  
COUNTY OF WALKESHA )

Personally came before me this 2<sup>ND</sup> day of August, 2001, the above-named ANDREW C TESKE and \_\_\_\_\_, to me known to be the VICE PRESIDENT and \_\_\_\_\_ respectively, of MLG Development, Inc. and who executed the foregoing instrument and acknowledged the same as the act and deed of said corporation as general partner of MLG Limited Partnership.

Nancy Pfeifer  
Notary Public, State of Wisconsin  
My Commission Expires: 11-18-01